APPENDIX.

RULE XXVII OF THE SUPREME COURT OF OHIO.

Pursuant to the powers of this Court over the Bar of this State and the members thereof, Rule XXVII is hereby amended, as follows, effective on January 1, 1957, and to remain in force until altered or abrogated.

(1) CREATION OF BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE. There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Distipline. Said Board of Commissioners is empowered and charged to receive, entertain, inquire into, take proofs, make findings and submit recommendations to this Court, as hereinafter provided,

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by any attorney or counselor at law or judge, or

(b) concerning practices of any attorney and counselor at law or judge, which tend to defeat the administration of justice or to bring the courts or the legal profession into disrepute, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this state.

(2) INVESTIGATIONS BY LOCAL OR STATE BAR COMMITTEES. Said Board of Commissioners on its own motion may cause to be instituted as to any such matters whatever investigation or action it deems proper by referring the matters to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association.

(3) APPOINTMENT OF BOARD OF COMMISSIONERS. Said Board of Commissioners shall consist of seventeen

(17) members of the Bar of this Court, appointed by this Court. One member of such Board shall be appointed from each of the following districts: *District 1*, comprising Butler, Clermont, Clinton, Hamilton and Warren Counties. *District 2*, comprising Darke, Miami, Montgomery, Preble and Shelby Counties. *District 3*, comprising Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert, Williams and Wood Counties. *District 4*, comprising Lucas County. *District 5*, comprising Crawford, Marion, Morrow, Ottawa, Sandusky, Seneca and Wyandot Counties. *District 6*, comprising Champaign, Clark, Fayette, Greene, Logan, Madison and Union Counties. *District 7*, comprising Delaware, Franklin and Pickaway Counties. *District 8*, comprising Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pike, Ross, Scioto and Vinton Counties. *District 9*, comprising Coshocton, Fairfield, Knox, Licking, Muskingum and Perry Counties. *District 10*, comprising Ashland, Erie, Holmes, Huron, Lorain, Medina, Richland and Wayne Counties. *District 11*, comprising Portage and Summit Counties. *District 12*, comprising Cuyahoga County. *District 13*, comprising Ashtabula, Columbiana, Geauga and Lake Counties. *District 14*, comprising Carroll, Mahoning, Stark, Trumbull and Tuscarawas Counties. *District 15*, comprising Belmont, Guernsey, Harrison, Jefferson and Monroe Counties. *District 16*, comprising Allen, Auglaize, Hardin and Mercer Counties. *District 17*, comprising Athens, Hocking, Meigs, Morgan, Noble and Washington Counties. The term of office of each member of said Board of Commissioners shall be three years, beginning on January 1 next following his appointment, except that the members appointed for Districts 1, 4, 7, 10 and 13, to take office January 1, 1957, shall be appointed for terms of one year each, and the members appointed for Districts 2, 5, 8, 11 and 14, to take office January 1, 1957, shall be

appointed for terms of two years each. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners, and designate a Secretary, who may, but need not, be a member.

(4) BOARD TO HAVE EXCLUSIVE JURISDICTION; AUTHORITY OF LOCAL COMMITTEES. From and after the effective date of this rule, all proceedings for the investigation of complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges, all proceedings for the discipline of such attorneys and counselors at law and judges, and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule; provided, however, that nothing herein contained shall be construed to prevent any committee of any regularly organized local bar association or of the Ohio State Bar Association from investigating and reporting on any complaint filed with it, referred to it, considered by it, or coming to its attention.

(5) DEFINITION OF MISCONDUCT. Misconduct, as the term is used herein, shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this state, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, or the commission or conviction of a crime involving moral turpitude.

(6) MANNER OF DISCIPLINE. Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

(7) EFFECT OF DISCIPLINE. A person disbarred shall never thereafter be readmitted to the practice of law in this state. A person who shall have voluntarily surrendered his license to practice and thereafter has been reinstated in the manner hereinafter provided and a person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(8) THE COMPLAINT, BY WHOM SIGNED. A complaint, as the term is used herein, shall mean a formal written complaint alleging misconduct of one, who shall be designated therein as the Respondent. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association

shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint. The complaint may also, but need not, be signed by the person aggrieved.

(9) Duty of Board upon Filing of Complaint; Notice to Respondent; Time for Answer. All such complaints shall be filed in quadruplicate in the office of the Secretary of the Board of Commissioners. If said Board of Commissioners finds that the complaint, upon its face, does not charge misconduct as herein defined, such complaint shall be dismissed. Otherwise said Secretary forthwith shall cause a copy of such complaint to be sent by registered mail to the Respondent named therein with a notice requiring him to file within twenty (20) days after the mailing of such notice his answer in quadruplicate, and serve copies thereof upon counsel of record named in the complaint.

(10) Hearing by Panel of Three Commissioners. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

(11) Duty of Panel if Charge Dismissed. If the panel finds that the charges in any complaint do not merit

the taking of disciplinary action, the complaint shall be dismissed, and such dismissal shall be reported to the Secretary of the Board of Commissioners, who shall notify the Respondent and all counsel of record of such action and shall notify the local bar association or associations of the County or Counties in which the Respondent resides and maintains his office, and of the County or Counties from which the complaint arose, of such action.

(12) PRIVATE REPRIMAND; DUTY OF PANEL. If the panel finds and determines that the Respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand and such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by such panel.

(13) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF PANEL. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, indefinite suspension, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(14) REVIEW BY ENTIRE BOARD OF COMMISSIONERS; BOARD TO ADMINISTER PRIVATE REPRIMAND. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the

prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(15) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF BOARD AFTER REVIEW. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(16) SHOW CAUSE ORDER ISSUED BY THE COURT TO RESPONDENT. Upon the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause before this Court at a time to be specified not less than forty (40) days after the issuance of such order, why the report of said Board

of Commissioners shall not be confirmed and a disciplinary order entered. Notice thereof shall be served by the Clerk of this Court upon the Respondent and all counsel of record, personally or by registered mail.

(17) TIME FOR FILING OBJECTIONS BY RESPONDENT. At least twenty (20) days before the date for showing cause stated in the order of this Court, the Respondent shall file, in the number and form required by rules of this Court for original actions, objections, setting forth the grounds thereof, to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report upon which said order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof upon the Secretary of the Board of Commissioners and upon all counsel of record for the Relator in the hearing before the Board of Commissioners

(18) TIME FOR FILING BRIEFS BY RELATOR. Counsel for the Relator before the Board of Commissioners shall file or cause to be filed in the number and form required by the rules of this Court for original actions, such briefs as are deemed necessary in answer to any brief filed by Respondent, together with proof of service of copies thereof upon Respondent or counsel of record for Respondent. The same shall be filed within fifteen (15) days after the filing of Respondent's brief. Extension of time for filing objections and briefs shall be governed by rules applicable to original actions.

(19) REVIEW BY COURT; REIMBURSEMENT FOR EXPENSES OF BOARD; DUTY OF CLERK UPON ENTERING ORDER. Upon failure of Respondent to file objections within the time limited above, or after consideration of such objections and such briefs as may be filed for and against the

same, and after hearing, if requested by this Court, this Court shall enter such order upon the matter as it may find proper, which may include such provision for reimbursement of the actual and necessary expenses incurred by the Board of Commissioners in connection with said proceedings as the Court shall deem just. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent at his last known address, to the local bar association or associations in the County or Counties in which the Respondent resides and maintains his office and the County or Counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such County or Counties, and to the Presiding Judge of the United States District Court having jurisdiction in such County or Counties.

(20) PROCEEDINGS PRIVATE UNTIL FILED IN SUPREME COURT. Unless and until filed in the Supreme Court of Ohio, all proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private, unless the Respondent shall request in writing that they be public.

(21) PETITION FOR REINSTATEMENT, WHEN IT MAY BE FILED. No petition for reinstatement to the practice of law shall be entertained by this Court, and the same may not be filed in this Court, within a period of two years after the entry of an order indefinitely suspending the Petitioner from the practice of law in this State, or within a period of two years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

(22) CONTENTS OF PETITION FOR REINSTATEMENT. Subject to the foregoing restrictions, any person who has

been indefinitely suspended from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when indefinite suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under this rule, to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that

(i) he has rehabilitated himself, and.

(ii) possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission.

(23) Costs To Be Deposited with Petition for Reinstatement. Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(24) REQUISITES FOR REINSTATEMENT; PASSAGE AT REGULAR BAR EXAMINATION. No person shall be reinstated unless he has established by clear and convincing evidence that

(a) he has rehabilitated himself, and

(b) possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission. In such case the order of reinstatement shall

(i) permit the applicant to take one of the regular bar examinations of the Supreme Court of Ohio, and

(ii) be conditioned upon the applicant's subsequently taking and passing such examination and thereafter taking the prescribed oath of office.

(25) PETITION FOR REINSTATEMENT REFERRED TO BOARD OF COMMISSIONERS. Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

(26) HEARING ON PETITION BY PANEL OF THREE; HEARING MAY BE PUBLIC; WHO MAY APPEAR; APPEAL TO COURT FROM DENIAL OF PETITION BY BOARD OF COMMISSIONERS. The Chairman of the Board of Commissioners shall appoint a hearing panel of three Commis-

sioners, no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension, and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in section 22(c) above. Such hearing shall be public if the Petitioner so requests in writing, and may be public in the discretion of the hearing panel. Any interested person, any member of the Bar, and any representative of any local bar association or of the Ohio State Bar Association may appear before the hearing panel in support of or in opposition to the petition. The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court on an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed. If the final report should recommend denial of the petition, the Petitioner shall have ten days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof, but no oral argument shall be heard thereon. The Court shall thereupon enter an appropriate order, which may include such provision for reimbursement of the actual and necessary expenses incurred in connection with the proceedings as the Court shall deem just.

(27) MANNER OF SERVICE OF NOTICES, ETC. Whenever provision is made for the service of any notice, order,

report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by registered mail.

(28) QUORUM OF PANEL OR BOARD. A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(29) CLERK IS AGENT FOR SERVICE OF NOTICES ON NONRESIDENT ATTORNEY. Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law or judge, pursuant to this rule.

(30) MANNER OF SERVICE ON CLERK; RECORD OF SUCH SERVICE NOT A PUBLIC RECORD. All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by registered mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the service upon said Clerk of this

Court, addressed to such Respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceeding which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of the service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(31) EACH MEMBER OF BOARD TO HAVE POWER TO ISSUE SUBPOENAS. Each member of the Board of Commissioners shall have power to issue subpoenas and to cause testimony to be taken under oath. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners.

(32) MAY ORDER DEPOSITIONS. Any member of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

(33) EFFECT OF REFUSAL TO TESTIFY. The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

(34) RULES OF EVIDENCE. All rules of evidence shall be observed in the conduct of all hearings, and the Re-

spondent may be represented by counsel, who shall enter formal appearance.

(35) DOCKET OF COMPLAINTS. The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(36) BOARD MAY PRESCRIBE RULES. The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(37) RULE TO BE LIBERALLY CONSTRUED. The process and procedure under this rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objection, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any non-prejudicial irregularity or for any error not resulting is a miscarriage of justice. This rule and such regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the Courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this rule. To the extent that application of this amended rule to such pending proceedings may not be practicable, the rules and regulations in force at the time this amended rule became effective shall continue to apply.

COMPLAINT FILED IN INSTANT CASE.

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF SUPREME COURT OF OHIO NO. 1.

STATE OF OHIO, COUNTY OF CUYAHOGA, SS.

CLEVELAND BAR ASSOCIATION,

Relator,

vs.

HENRY H. PLEASANT,

Respondent.

COMPLAINT.

Now comes the Cleveland Bar Association the relator herein and says that Henry H. Pleasant, the respondent, has been guilty of misconduct within the meaning of Rule 27, Paragraph 5, of the Supreme Court of Ohio as more specifically set forth in the case of In Re Estate of Wright, 165 Ohio St. 15.

WHEREFORE, relator prays that the respondent be served with notice of this complaint and a hearing be held within the terms of Rule 27 of the Supreme Court of Ohio.

OPINION OF THE SUPREME COURT OF OHIO IN WRIGHT CASE.

IN RE ESTATE OF WRIGHT: PLEASANT, APPELLEE, v. PERSKY ET AL., COMMITTEE, APPELLANTS.

1. It is a fundamental principle of law that, where parties having different interests are involved, no lawyer can represent or receive compensation from such parties without a full disclosure, to all the parties involved, of his dual representation and the arrangements as to the compensation to be received therefrom.
2. Where an attorney is administrator of an estate and is likewise acting as attorney in such administration, in the absence of a full disclosure concerning an arrangement for compensation from a claimant against the estate, and the consent of all interested parties, he impliedly represents that he has no such arrangement.
3. Where an attorney, who is administrator of an estate, enters into a contract with a claimant against such estate for a percentage of the proceeds which such claimant may receive from the estate, makes no disclosure of such arrangement to the Probate Court in whose jurisdiction such estate is being administered, and such court proceeds to confirm the final account of such administrator, which it probably would not have done had it known of the arrangement, such administrator thereby perpetrates a fraud upon the court, for which the order confirming the final account may be vacated and which may constitute a direct contempt upon the court punishable under Section 2705.01, Revised Code.

(No. 34403—Decided March 7, 1956.)

APPEAL from the Court of Appeals for Cuyahoga County.

There is no substantial dispute concerning the facts in the present case except as to inferences to be drawn from certain testimony.

On February 19, 1949, the Probate Court of Cuyahoga County appointed Henry H. Pleasant, administrator of the estate of William A. Wright, deceased. The administrator, appellee herein, is a member of the Cleveland bar, and he administered the estate with dispatch.

On September 23, 1949, he filed his final account which was approved on October 31, 1949.

On November 28, 1953, a committee of lawyers, acting on the request of the probate judge who was not in office during any of the time covered by the administration of the estate, filed in the Probate Court a motion captioned "motion to vacate order approving fiduciary's account."

The prayer of this motion is:

> "1. That the court vacate and set aside the order heretofore entered by it on October 31, 1949, upon the settlement of the fiduciary account.
>
> "2. That the court deny the said Henry H. Pleasant attorney fees and administrator commissions for not having faithfully discharged his duties.
>
> "3. That the court require the said Henry H. Pleasant to show cause why he should not be made to reimburse the estate of William A. Wright, deceased, the sum of $1,444.84 obtained by him while serving in the dual capacity of administrator of the estate of William A. Wright, deceased, and attorney and personal representative for William Wright as claimant against the estate without making full disclosure to the court of the existence of the contract between the said Henry H. Pleasant and William Wright and without prior knowledge, consent, or approval of the court.
>
> "4. That if, upon consideration of the evidence, the court finds that the acts and conduct of Henry H. Pleasant require further inquiry to determine whether such acts and conduct are in contempt of this court an order be made to institute appropriate proceedings."

After a protracted trial, the probate judge entered a judgment vacating the final settlement of the account of appellee and reopening the administration of the estate because of fraud upon the court; that appellee be denied the statutory fees and commissions; that he pay to Willis Wright, executor of the estate of William Wright, deceased, the sum of $233 and amend his final account accordingly, which shall then stand approved as the final account; that the claim of the executor of William Wright in the sum of $1,444.84, representing the amount paid by William Wright to appellee under an alleged agreement dated September 20, 1949, be denied; and that appellee be held in contempt of the court and fined the sum of $2,000.

Appellee appealed from the judgment of the Probate Court to the Court of Appeals, which court affirmed that part of the judgment of the Probate Court which vacated the order approving the final account of appellee and ordered the return of the statutory compensation, but reversed the judgment as to conviction of contempt and rendered final judgment in that respect in favor of appellee.

The cause is before this Court by reason of the allowance of a motion to certify the record, which motion was filed by Jack A. Persky, Victor DeMarco and John R. Kistner, *amici curiae* by appointment by Walter T. Kinder, Judge of the Probate Court of Cuyahoga County.

No cross-appeal was filed by appellee although he did file a cross-assignment of errors.

Additional facts are stated in the opinion.

STEWART, J. A query arises as to whether this Court may consider the cross-assignment of errors filed by appellee to the effect that the Court of Appeals was in error

in affirming the judgment of the Probate Court so far as it found that appellee committed a fraud upon the court, vacated the final account and ordered the return by appellee of the statutory fees he had received from the estate of William A. Wright, or whether we are confined to the question whether appellee was in direct contempt of the Probate Court by his conduct in the administration of the estate of William A. Wright.

One of the things essential to invoke the jurisdiction of this Court in an appeal from the Court of Appeals is a filing in that court of a notice of appeal within 20 days of the rendition of its judgment.

For the benefit of a party to a judgment of the Court of Appeals who does not wish to appeal from such judgment unless the opposing party does so, this Court adopted Section 1(C) of Rule II, which reads as follows:

> "A notice of cross-appeal may be filed in this court by an adverse party within the time provided by law for the filing of a notice of appeal. Provided, however, that such party may deposit his notice of cross-appeal with the clerk of the Court of Appeals or with an administrative board and with the clerk of this court, with instructions to said clerks or board to file such notice of cross-appeal upon the filing of notice of appeal by the appellant."

In 1945 the General Assembly enacted Section 12223-21a General Code, which reads:

> "Assignments of error may be filed on behalf of an appellee which shall be passed upon by a reviewing court before a judgment or order is reversed in whole or in part. The time within which assignments of error on behalf of an appellee may be filed shall be fixed by rule of court."

This court has never passed upon the meaning or effect of this section, and the only comment upon it found

in the reports of cases decided by this court is in the opinion in *Winslow v. Ohio Bus Line Co.*, 148 Ohio St. 101, 73 N. E. (2d), 504, where Judge Turner said:

> "The jurisdiction and duties of this court are fixed primarily by Section 2, Article IV of the Constitution of Ohio. Therefore, such statute is of doubtful constitutionality. However, it is not necessary for us to pass upon its constitutionality for the reason that it is the practice of this Court, before reversing or modifying the judgment of the Court of Appeals, to examine appellee's assignments of error which were pressed in the Court of Appeals and passed upon by that court as shown by the record certified to this court."

In view of the conclusion at which we have arrived, it is not necessary for us at this time to pass upon the question as to whether an appellee in this court saves his right of appeal by merely filing a cross-assignment of errors.

The Probate Court was the trier of the facts and it found the pertinent facts to be substantially as follows:

In his application for letters of administration, appellee named certain persons as next of kin, such persons being second cousins of decedent. William A. Wright. Within two weeks from appellee's appointment, there appeared at his office a man named William Wright who claimed to be first cousin of decedent William A. Wright.

On June 3, 1949, William Wright was found by the Probate Court to be the sole heir of William A. Wright.

On March 21, 1949, appellee filed a petition to determine heirship and, on the following day, a petition to sell real estate to pay debts. In these petitions the named defendants were the four second cousins of decedent and one Helen Paflovski who claimed to be the common-law wife of decedent. William Wright's name did not appear, although in both petitions there was added the phrase,

"unknown heirs, devisees, legatees, administrators, executors and assigns of William A. Wright, deceased."

In the Probate Court's opinion no satisfactory answer was given for appellee's failure to make William Wright a party-defendant and to accord him the same treatment as was accorded the second cousins and the alleged common-law wife, although William Wright had claimed to appellee to be a first cousin and should have been named party-defendant.

On March 23, and March 24, 1949, appellee filed affidavits to the effect that service could not be made on the unknown heirs, legatees, administrators, executors, devisees and assigns of decedent.

On May 24, 1949, William Wright first appeared and filed a waiver of summons, entry of appearance and consent in the heirship proceeding, and on June 3, on the hearing of the petition, an order was entered determining that William Wright was the sole heir of decedent.

In the proceeding to sell real estate, a waiver of summons and entry of appearance by William Wright was filed on May 24, 1949, and leave was given him to become a new party-defendant.

On June 3, the property was sold for $4,000, which constituted the greater part of the estate of decedent.

The Probate Court found from appellee's own testimony that of all the time spent in the administration of this estate, 10 hours would cover services which appellee claims to have personally rendered to William Wright as his attorney. Such services were limited to resistance of the claim of Helen Paflovski, alleged common-law wife of decedent, although appellee had denied this claim in May 1949. We may add, however, that appellee testified as to considerable services consisting of correspondence and

the securing of documents from England, establishing William Wright's relationship to decedent.

In coming to the conclusions at which it arrived, the Probate Court considered a written agreement entered into between William Wright and appellee, personally, on September 20, 1949, and it is largely from that agreement that it drew the inferences which determined the judgment it entered. That agreement is as follows:

> "Agreement made this 20th day of September, 1949, by and between William Wright (hereinafter called 'the client') and Henry H. Pleasant, attorney at law (hereinafter called 'the attorney'),
>
> "Witnesseth:
>
> "The client hereby had retained and employed Henry H. Pleasant to act for and on his behalf in various legal matters pertaining to the estate of William A. Wright.
>
> "In consideration for the services rendered by Henry H. Pleasant, the client had agreed and does hereby agree to pay said Henry H. Pleasant forty per cent (40%) of whatever sums the said William Wright receives from the estate of William A. Wright; and
>
> "Whereas, various legal transactions and dealings have and had taken place between William A. [*sic*] Wright and Henry H. Pleasant; and
>
> "Whereas, said William Wright has paid to Henry H. Pleasant the sum of one thousand four hundred and forty-four & 84/100 dollars ($1.444.84), this being forty per cent (40%) of the amount which the said William Wright received, to wit: three thousand six hundred twelve & 10/100 dollars ($3,612.10).
>
> "Now, therefore, in consideration of the payment of the sum of one thousand four hundred forty-four & 84/100 dollars ($1,444.84), the receipt of which is hereby acknowledged by Henry H. Pleasant and the

sum of two thousand one hundred sixty-seven & 26/100 dollars ($2,167.26) received by William Wright, the receipt of which is hereby acknowledged, each of the said parties hereto does hereby release and forever discharge the other, his executors and administrators, from all debts, claims, demands, actions and causes of action whatsoever from the beginning of the world to the date of these presents.

"In witness whereof, the parties hereunto set their hands this day and year first above written.

"In the presence of: (Signed) William Wright,
"(Signed) Mrs. E. Skelly (Signed) Henry H. Pleasant"

Because the agreement records transactions and understandings which had already occurred, it indicates, according to the Probate Court, that William Wright had previously employed appellee, personally, as his attorney to act for and in his behalf in reference to the estate of which appellee was then administrator; that it follows that the "legal transactions and dealings" recited in the contract could only be referable to the proceedings to determine heirship and to sell the real estate; and that the understanding as to employment between Wright and appellee, personally, was reached prior to and in connection with the proceeding to determine heirship, which explained the delay until May 24 in making William Wright a party-defendant, which date was only 10 days prior to the determination of Wright as the sole heir.

The Probate Court inferred and found from the evidence the formulation of a plan by appellee to ascertain to his satisfaction the real owner of the estate of William A. Wright, and thereupon to enter into an arrangement with William Wright for appellee's compensation upon the basis of 40 per cent of what William Wright should realize.

Appellee testified that, in connection with the hearing on the final account, he stated to the then probate judge that this was a case involving a sole heir and asked whether it would be proper for him to make his own agreement with the heir, and that the judge nodded his approval. However, appellee conceded that at no time did he disclose to the judge either the fact or the terms of his arrangement with William Wright.

The court frankly stated that it did not believe appellee's testimony that no arrangement was made until the execution of the contract of September 20, since all the facts, including the wording of the contract in the past tense, indicated a former oral arrangement.

Because appellee made no disclosure to any of the parties before the court or to the court itself of his arrangement with William Wright to collect from him 40 per cent of what he received from the estate, the court found appellee had committed a fraud upon it and a contempt of court.

It seems to us that, regardless of whether we would have drawn the same inferences from the testimony as did the Probate Court, that court as the trier of the facts was entitled to pass upon the credibility of appellee's testimony, and that the inferences the court drew could properly be drawn.

The Court of Appeals sustained the Probate Court in its factual findings, and, since this Co·· ·t does not ordinarily weigh evidence, we must take t · facts as found by the two courts below.

Although ordinarily we do not weigh evidence, we do examine the record to ascertain whether there is any evidence to substantiate a finding of a court below.

It is argued by appellee that there is no evidence of fraud upon his part; and that to constitute fraud the fol-

lowing elements must appear, to wit: a false representation, such misrepresentation must relate to a material existing fact, the person making the misrepresentation could have ascertained its falsity, the misrepresentation was intended to be relied on, and the person relying on the misrepresentation was damaged as a direct result thereof.

Do the facts as found by the Probate Court and sustained by the Court of Appeals fulfill this definition of fraud as presented by the appellee?

It is a fundamental principle of law that, where parties having different interests are involved, no lawyer can represent or receive compensation from such parties without a full disclosure, to all the parties involved, of his dual representation and the arrangements as to the compensation to be received therefrom.

Every lawyer worthy of the name learns this principle *ab initio*. In fact, it is indicated in the oath of office he takes upon his admission to the bar. It follows that, where one is acting as an administrator of an estate, his sole duty is to its proper administration, and he can not properly have an arrangement to represent a claimant against the estate without a full disclosure of such arrangement to the court and to all persons concerned in the estate, not only as to the terms of the arrangement but as to the compensation he is to receive therefrom.

Where one accepts an appointment as administrator of an estate he represents that he has no arrangement for compensation from any one concerned with the estate, in the absence of a full disclosure concerning such arrangement and the consent of all interested parties thereto. Certainly, such a representation relates to a material existing fact, and, if he is violating his duty, a lawyer making such representation knows of its falsity. Necessarily, the representation is intended to be relied upon, and the court in

relying upon it almost inevitably makes orders, such as fees paid from the estate, which it in all probability would not do had a full disclosure been made to it. If we must abide, as we do, by the finding of the facts by the trier thereof and as sustained by the Court of Appeals, we necessarily must sustain the finding of fraud upon the court by appellee.

We come now to the matter of contempt of court.

The Probate Court found that appellee's conduct constituted misbehavior in the presence of or so near the court as to obstruct the administration of justice, and that, therefore, it was authorized to penalize appellee summarily. (Section 2705.01, Revised Code.)

The Court of Appeals, on the other hand, held that apellee was not guilty of any direct contempt of court so as to be liable to summary punishment, and that he could not be found guilty of contempt except as a result of a charge, in writing, filed in accordance with Section 2705.03, Revised Code, for acts specified in Section 2705.02, Revised Code.

Appellee vehemently contends that in the trial of the present case he had no intimation that anything was to be considered except the vacating of his final account, and that he had no opportunity to defend against the charge of contempt of court. He contends that as a result he has been denied due process. However, the following colloquy occurred between counsel for appellee and the Probate Court at the conclusion of the evidence on behalf of appellants:

> "Mr. Corrigan: 'If the court please, I want to make a motion at this time, that the motion of both the committee, the *amici curiae*; and the motion of Willis Wright, be dismissed. [Willis Wright is the executor of the estate of William Wright, deceased, from whom

appellee secured 40 per cent of the proceeds received by William Wright from the estate, Willis Wright having intervened in the present hearing with a motion to recover the amount paid to appellee by William Wright, which motion the Probate Court overruled and from which no appeal has been taken.

" 'But I do want the court to reserve his ruling on that motion, because I do want to have the entire matter laid before the court, so that the court will understand entirely the relationship between this estate and this lawyer, and for that reason I will call to the stand Mr. Pleasant.'

"The Court: 'I will reserve my ruling on your motion so that the record will be protected, and I assume that in the defense of the case, that when you offer evidence, you are keeping in mind not only—and again what I am about to say is indicative of no conclusion that is to be drawn—but you will be keeping in mind the relief asked for here about the accounting for the executor's fees and accounting for the amount of money Mr. Pleasant received, and also along the lines that the motion invites the court to consider the matter of possible contempt.'

"Mr. Corrigan: 'Yes.'

"The Court: 'Very good. Had you finished?'

"Mr. Corrigan: 'Yes, I had finished.' "

It seems obvious that all parties were apprised that the matter of contempt of court was being tried along with the matter of the vacation of the final account.

Appellee contends, and the Court of Appeals held, that in order to constitute a direct contempt there must be an act the court itself witnesses, conduct so close to the courtroom that the judge can not avoid seeing or hearing it, or an act in the courtroom itself such as impedes or obstructs justice.

Appellee contends that, since he expeditiously administered the estate of William A. Wright, his contract to be

paid 40 per cent of the proceeds by the sole heir at law was not either an act in the presence of the court or one such as to obstruct justice.

In our opinion, a direct contempt of court is not confined to a disorderly or obstreperous act in the presence of the court itself. If the act constitutes a fraud upon the court and is such as to influence or persuade the court to make orders in its own courtroom, concerning which it probably would have done otherwise had the act not occurred, there is such an obstruction of justice as to constitute direct contempt.

It must be remembered that contempt of court is directed to the court itself rather than toward an individual judge thereof.

In the present case, if appellee had not represented a claimant against the estate of which he was administrator, he would have been entitled to receive his statutory administration fees and compensation for whatever extraordinary services he rendered, as fixed by the court. In the present case he received his statutory administration fees, made no application for attorney fees, and collected 40 per cent of the net estate from the person receiving it. Appellee contends that the 40 per cent he collected was in lieu of what the court would have allowed him anyhow for attorney fees and extraordinary expenses, but the flaw in such contention is that the court must fix the amount of such fees, and the attorney has no right to make contracts with claimants against the estate for the payment of fees which he fixes.

It is certain that a full disclosure to the court of his contract with the sole heir would have had a direct bearing on the action of the court in considering appellee's final account, and appellee was engaged in conduct obstructing justice in the court itself in failing to make a frank and

full disclosure, in failing to give the court full information as to his contract with the sole heir at the time such agreement was entered into, and in failing to obtain the consent to such agreement from all parties concerned in the administration of the estate.

An act need not be in the immediate presence of the court in order to constitute direct contempt, if it tends to obstruct justice or interfere with actions of the court in the courtroom itself.

Accordingly, the judgment of the Court of Appeals is reversed in part, and the judgment of the Probate Court is affirmed.

Judgment reversed in part.

WEYGANDT, C. J., MATTHIAS, HART, ZIMMERMAN, BELL and TAFT, JJ., concur.

OPINION OF THE SUPREME COURT OF OHIO IN INSTANT CASE.

CLEVELAND BAR ASSOCIATION v. PLEASANT.

1. The Supreme Court of Ohio has inherent power as to the disciplining of attorneys admitted to practice in this state and may provide by rule the procedure with reference to such disciplining.
2. Rule XXVII of the Supreme Court, as amended effective January 1, 1957, as it applies to procedure in reference to the exercise of original jurisdiction by the Supreme Court in the disciplining of attorneys, is constitutional.
3. Where an attorney is guilty of fraud upon the court, in his actions as an administrator of an estate and as an attorney for the heir of such estate, this court, acting within its inherent power, may discipline him.

(D. D. No. 1—Decided March 5, 1958.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

The present cause is before this court upon objections to the final report of the Board of Commissioners on Grievances and Discipline, including its findings of fact and recommendations.

This court, having determined to exercise more fully original disciplinary powers over the Bar of this state and the members thereof, amended its Rule XXVII, effective January 1, 1957.

Under such amendment, the Board of Commissioners on Grievances and Discipline is set up, empowered and charged to receive, entertain, inquire into, take proofs, make findings, and submit recommendations to this court concerning complaints of misconduct of attorneys and concerning petitions for reinstatement as attorney. Such board is empowered to investigate upon its own motion

and refer any matters to a grievance committee of an appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association.

The commissioners are appointed by this court, one from each of 17 districts. The board has exclusive jurisdiction concerning the investigation of complaints and grievances as to attorneys and judges, and all proceedings for reinstatement of an attorney, although nothing is to be construed to prevent any committee of a regularly organized bar association or the Ohio State Bar Association from investigating and reporting on any complaint filed with either of them.

The rule defines misconduct as a violation of the oath of office taken upon admission to practice law, or as any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by this court from time to time, or as the commission of or conviction for a crime involving moral turpitude.

The following four grades of discipline are established:

(a) A permanent disbarment from the practice of law.

(b) Suspension for an indefinite period from the practice of law, subject to reinstatement upon certain conditions.

(c) A public reprimand.

(d) A private reprimand.

The rule sets forth the manner of making a complaint and the duty of the board upon the filing of the complaint as to notice to respondent and time for answer, provides for a hearing of the complaint by a panel of three commissioners, no one of whom shall be a resident of the district

from which the complaint originated, and sets forth the power of the panel to dismiss the complaint if found without merit or to administer a private reprimand. If the panel finds that a more severe disciplinary action is merited, it shall make a certified report, including its findings and recommendations, to the board of commissioners which must review such findings, and if the board finds that a public reprimand, suspension or disbarment is merited, the board shall make a final certified report of its proceeding, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken, with the clerk of this court. The rule then provides for the filing of objections to the report of the board by the one against whom the charges have been filed and for a review and final order in respect thereto by this court.

The rule provides further that all proceedings shall be private until filed in this court, unless the one against whom the charges are made shall request in writing that they be public.

The rule provides in detail for petitions for reinstatement and proceedings incident thereto, which provisions are not of importance in the present case.

The present case originated by the filing of charges by the Cleveland Bar Association against Henry H. Pleasant, and, after the matter was considered by the Board of Commissioners on Grievances and Discipline, that board made findings of fact and recommendations, as follows:

> "This matter came on for consideration before the Board of Commissioners on Grievances and Discipline on the pleadings, the evidence, the exhibits, on the briefs of counsel, and on the transcript of the proceedings before the hearing panel. Said board of commissioners hereby makes the following findings of fact:

"1. The respondent, Henry H. Pleasant, on February 19, 1949, was duly appointed by the Probate Court of Cuyahoga County as administrator of the estate of William A. Wright, deceased.

"2. The respondent also acted as attorney for the estate of William A. Wright, deceased.

"3. The respondent also represented, as attorney, one of the claimants, William Wright, who was later determined by the court to be the sole heir of the estate of William A. Wright, deceased.

"4. The respondent represented the claimant, William Wright, as attorney, from on or about the 15th day of March 1949, until the termination of said estate.

"5. The respondent at no time made full and complete disclosure to the judge or any officer of the Probate Court of Cuyahoga County of his representation of William Wright, claimant or sole heir of said estate.

"6. The respondent made a fee arrangement on a percentage basis with William Wright for a share of his recovery from the estate of William A. Wright, deceased, as evidenced by a written contract dated September 20, 1949, of which no disclosure was made.

"7. The respondent, as a result of his conduct with reference to said estate, was, as a matter of record, found guilty of perpetrating a fraud on the Probate Court of Cuyahoga County, which finding remains unreversed and unmodified.

"8. The respondent violated the statutory requirements provided for in Section 10509-193, Ohio General Code (Section 2113.36, Ohio Revised Code), relative to the further allowance of counsel fees to be charged against an estate.

"9. The respondent violated the established practice in the Probate Court of Cuyahoga County relative to the procedure pertaining to the allowance of counsel fees to be charged against an estate.

"10. It is therefore the determination of the board of commissioners that the respondent, Henry H. Pleasant, has violated Section 5 of Rule XXVII on disciplinary procedure of the Supreme Court of Ohio. The respondent is guilty of misconduct in that he violated his oath of office and the Canons of Professional Ethics, more particularly sections 6, 29, 32, and 38 of said canons.

"RECOMMENDATION

"The Board of Commissioners on Grievances and Discipline hereby recommends that the respondent, Henry H. Pleasant, be suspended from the practice of law for an indefinite period."

Henry H. Pleasant was admitted to the Bar of the state of Ohio in 1931 and has been practicing law ever since that date, except that in 1941 he was suspended from practice for eight months by the Common Pleas Court of Cuyahoga County.

In 1949, much of Pleasant's practice consisted of Probate Court work.

On February 16, 1949, one William A. Wright, whom Pleasant had known since 1944 but had never represented, died intestate.

A Bessie Hansen called Pleasant to come to a funeral home, which he did, taking with him an application for the appointment of an administrator. Upon arrival at the funeral home, he met Hansen and two others who claimed to be second cousins of the deceased. Pleasant had never before known these people and took it for granted that they were second cousins. These second cousins requested Pleasant that he be appointed administrator, they signed waivers on the application for appointment, and, on February 19, Pleasant obtained such appointment.

On February 20, Pleasant and the second cousins

went to the deceased's house to search for a possible will, bankbooks, or papers.

Shortly thereafter, a woman by tne name of Helen Pavloski came to Pleasant's office and claimed to have been the commonlaw wife of the deceased, and a few days later she returned with a young man whom she claimed was her son by the deceased.

Pleasant told her he would not recognize her claim and if she wished to press the matter she would have to obtain a lawyer and have the court decide.

On February 22, Pleasant prepared a petition to determine heirship, an application to determine succession tax, and a petition to sell real estate.

About two months after Pleasant's appointment as administrator, William Wright came to Pleasant's office and claimed to be a friend of the family. About 10 days later, Wright returned and claimed to be a first cousin of the deceased.

This happened between March 10 and 15.

The petition to determine heirship was not filed until March 21, 1949.

Pleasant did not advise Wright to obtain a lawyer to represent him as he had done with reference to Pavloski.

Pleasant wrote letters to England and elsewhere and eventually obtained a birth certificate on May 15, 1949, establishing that William Wright was the first cousin of the deceased.

On May 24, 1949, Pleasant amended his petition to determine heirship by adding, in longhand, the following, "Unknown heirs, devisees, legatees, administrators, executors of William A. Wright, deceased, and Agnes Boltz," and in addition the following was written, "William Wright, new party deft."

The petition to sell real estate, which was prepared on February 22, 1949, but not filed until March 22, 1949,

failed to set forth the claim and interest of William Wright as first cousin, but was amended May 24, 1949, by adding "William Wright, new defendant."

On June 3, 1949, there was a hearing on the petition to determine heirship, at which time William Wright was found to be the sole heir, and the real estate was ordered sold. On the same date, in Pleasant's office, William Wright discussed with him a new claim made by Pavloski for alleged services. Such claim had been filed on May 19, and, although Pleasant denied that he agreed to act as Wright's individual attorney, apparently, according to testimony Pleasant gave in a previous hearing, he had agreed to be Wright's lawyer with reference to the Pavloski claim.

On September 20, 1949, Pleasant and Wright signed an agreement, which stated that Wright *had* retained and employed Pleasant to act for and on his behalf in various legal matters pertaining to the estate of the deceased, and that Wright *had* agreed to pay Pleasant 40 per cent of whatever sums Wright might receive from the estate.

Based upon the wording of the agreement, an inference can be drawn that it was simply a written memorandum of an agreement entered into long before, and such inference, of course, is strengthened by the fact that, although Wright had told Pleasant before March 15 that he was a first cousin of the deceased, and the petition to determine heirship was filed on March 24, Wright was not made a defendant in such petition until May 24.

The final account filed in the administration of the estate shows administrator's fees of $235, and that William Wright was paid $3,612.10.

The final account was prepared on September 20, 1949, and, on September 21, Pleasant and Wright went to the Second Federal Savings & Loan, whereupon Wright was given a check for $3,612.10, Pleasant being designated

as the maker. The check was approved by an officer of the Second Federal Savings & Loan, and then two checks were issued, one to Pleasant for $1,444.84, being 40 per cent of $3,612.10, and the other to Wright for the balance of $2,167.26, or 60 per cent.

The final account does not show that Pleasant received 40 per cent of the estate, nor was it ever brought to the court's attention.

As a result of the proceedings in the settlement of the estate, the Probate Court of Cuyahoga County found that Pleasant had perpetrated fraud upon it, and he was held in contempt. The matter finally reached this court in the case of *In re Estate of Wright*, 165 Ohio St., 15, 133 N. E. (2d), 350, where this court held in the syllabus as follows:

"1. It is fundamental principle of law that, where parties having different interests are involved, no lawyer can represent or receive compensation from such parties without a full disclosure, to all the parties involved, of his dual representation and the arrangements as to the compensation to be received therefrom.

"2. Where an attorney is administrator of an estate and is likewise acting as attorney in such administration, in the absence of a full disclosure concerning an arrangement for compensation from a claimant against the estate and the consent of all interested parties, he impliedly represents that he has no such arrangement.

"3. Where an attorney, who is administrator of an estate, enters into a contract with a claimant against such estate for a percentage of the proceeds which such claimant may receive from the estate, makes no disclosure of such arrangement to the Probate Court in whose jurisdiction such estate is being administered, and such court proceeds to confirm the final account of such administrator, which it probably would not have done had it known of the arrange-

ment, such administrator thereby perpetrates a fraud upon the court, for which the order confirming the final account may be vacated and which may constitute a direct contempt upon the court punishable under Section 2705.01, Revised Code."

Pleasant has presented four objections to the finding of the Board of Commissioners on Grievances and Discipline:

"1. This entire procedure, it is humbly suggested, is based upon an erroneous assumption that respondent occupied an adverse position and represented adverse and conflicting interests.

"2. The panel, and all of the courts that have had anything to do with this matter, assumed the existence of a rule in the Probate Court of Cuyahoga County, which rule in fact did not exist.

"3. The respondent was not afforded a fair legal hearing before the panel inasmuch as he was not advised of the charges he was called upon to answer and certain requests and motions made by the respondent were never acted upon by the panel before, during, or after the hearing.

"4. The entire proceeding before the panel, as well as the rule of this court under which the proceeding was brought and conducted, is unconstitutional."

STEWART, J. As to objection No. 1, we are of the opinion that Pleasant is mistaken in his view that the entire procedure in this case is based upon the assumption that he occupied an adverse position and represented adverse and conflicting interests. He strenuously contends that in a proceeding to determine heirship there can really be no conflicting interests, the sole question being who is the heir, and that, therefore, in representing first cousin Wright he was in no sense hostile to the second cousins, who had called him originally and set in motion the pro-

ceedings to make him administrator of the estate. It is, however, a fact that Pleasant made an agreement to represent first cousin Wright and received from him 40 per cent of the entire proceeds of the estate, without letting the second cousins know of his relationship with Wright and without disclosing his arrangement to the court.

Pleasant, as the administrator, was entitled to represent himself as administrator and was likewise entitled to receive an allowance for legal services, both ordinary and extraordinary, but, nevertheless, such services should be paid for either by allowance by the Probate Court or after a full disclosure to the court as to any private arrangement he had with an heir of the estate to pay for such services. That he was found to have committed fraud upon the Probate Court was based upon the fact that he failed to disclose to the court or to any one else, except the person who had signed the contract with him, his arrangement to receive 40 per cent of the estate.

As to objection No. 2, Pleasant strenuously contends that the panel and the courts have assumed that there was a rule of the Cuyahoga County Probate Court requiring an attorney to report an attorney fee, and that the testimony demonstrates there was no such rule.

Assuming that such rule did not exist, there is a statute in Ohio, Section 2113.36, Revised Code (Section 10509-193, General Code), which reads in part as follows:

> "* * * When an attorney has been employed in the administration of the estate, reasonable attorney fees paid by the executor or administrator shall be allowed as a part of the expenses of administration. The court may at any time during administration fix the amount of such fees and, on application of the executor or administrator or the attorney, shall fix the amount thereof. * * *"

It is obvious that the law of Ohio contemplates that the attorney fees in the administration of an estate shall be allowed and determined by the Probate Court, and, if they are to be paid under a contract with an heir of the estate, who is being represented by the administrator as attorney, such arrangement shall be disclosed to the Probate Court, not only because of the statute above referred to, but as a protection against any overreaching.

As to objection No. 3, that Pleasant was not advised of the charges he was called upon to answer, and that certain requests and motions made by him were never acted upon by the panel before, during, or after the hearing, we are of the opinion that there is no merit therein.

A reading of the record of the proceedings before the panel demonstrates that Pleasant and his counsel were fully aware of what they were called upon to meet.

Objection No. 4 is to the effect that Rule XXVII of this Court, under which the present proceeding was brought and conducted, is unconstitutional, and it is strenuously contended (1) that the Supreme Court may not by rule legislate or amend the statutes of Ohio and restrict the inherent power of a lower court; (2) that an attorney may not be deprived of his right to practice law without the right of hearing before any court in this state unless the Supreme Court permits such hearing; and (3) that the Supreme Court may not delegate its judicial powers to a board of commissioners with power to make final judicial determinations.

In reference to such contentions, this Court is firmly of the opinion that both the admission to the practice of law and the disciplining of those who have been admitted to practice are matters which come within the inherent powers of the judicial branch of the government, and that, although this Court recognizes that the legislative branch

may by statute provide standards and qualifications for admission to the bar and methods for the initiation and conduct of proceedings to disbar, suspend, or otherwise discipline attorneys for specified causes, such legislation is to be interpreted as an aid to and not as a limitation on the power of the judicial branch in these respects. *In re McBride*, 164 Ohio St., 419, 132 N. E. (2d), 113.

In the case of *In re Thatcher*, 80 Ohio St., 492, 89 N. E., 39, this Court held that "the Supreme Court of Ohio has inherent jurisdiction of proceedings to disbar an attorney, resulting as an incident of its organization as a court, as well as from its power to admit to the Bar."

This pronouncement has never been questioned, except by a dictum in the opinion in the case of *In re Hawke*, 107 Ohio St., 341, 140 N. E., 583. This dictum was in no way related to the question before the court and was not carried into the syllabus of the case.

In the *Hawke* case, there had been a judgment of disbarment in the Court of Common Pleas, and it was claimed that there could be an appeal from that judgment as in a chancery proceeding. This Court held simply that there could be no such appeal, and that chancery cases do not now and never have comprehended proceedings for disbarment or suspension of attorneys at law. See, also, *In re Disbarment of Lieberman*, 163 Ohio St., 35, 125 N. E. (2d), 328.

Obviously, the whole matter with reference to the power to admit attorneys to the practice of law and to disbar, suspend, or otherwise discipline them after admission has been settled in the case of *In re McBride*, *supra*.

The first paragraph of the syllabus of the *McBride* case reads as follows:

> "The power to admit attorneys to the practice of law and to disbar, suspend, or otherwise discipline

them after admission rests inherently in the judicial branch of the government."

There can be no question now of the inherent power of this court as to the disciplining of attorneys and, therefore, of its power to provide by rule the procedure in reference to hearings upon such questions. That is all that was contemplated in the establishment of the Board of Commissioners on Grievances and Discipline. Such board or its panels have no power to discipline an attorney, except with reference to a private reprimand, and surely that can not constitute a judgment, for the power to give such a reprimand would be inherent without any authorization by this Court. As to any other disciplinary action, all that the board can do is to investigate and make findings of fact and recommendations, and the only order or decision is made solely by this Court.

As to the contention that, assuming that disbarment is a matter inherent in the judicial branch of the government, it must be inherent not only in the Supreme Court but likewise in all lower courts, Section 1, Article IV of the Ohio Constitution, reads:

> "The judicial power of the state is vested in a Supreme Court, Courts of Appeals, Courts of Common Pleas, Courts of Probate, and such other courts inferior to the Courts of Appeals as may from time to time be established by law."

The contention that the Supreme Court can not deny the inherent power of Courts of Common Pleas, with reference to disciplinary actions against attorneys, would be a matter of concern if that question were before us. However, since the present case is one in which only the inherent power of the Supreme Court to discipline an attorney is concerned, and since Rule XXVII only concerns itself, so far as the matter is now before us, with the pro-

cedure for exercising disciplinary action before this Court, we are impelled to hold that there is nothing unconstitutional about the rule so far as it applies to the present case.

From what we have said, we overrule the objections to the final report of the Board of Commissioners on Grievances and Discipline, including the findings of fact and recommendations of such board, and confirm such report.

Report confirmed and judgment accordingly.

WEYGANDT, C. J., ZIMMERMAN, TAFT, MATTHIAS, BELL and HERBERT, JJ., concur.

JOURNAL ENTRY OF THE SUPREME COURT OF OHIO.

(March 5, 1958.)

This cause came on to be heard upon the Objections by respondent to the Final Report of the Board of Commissioners on Grievances and Discipline and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the Objections to the Final Report of the Board of Commissioners are not well taken and should not be sustained for the reasons stated in the opinion filed herein.

It is further ordered and adjudged that the Final Report of the Board of Commissioners on Grievances and Discipline be and the same hereby is, confirmed and the respondent, Henry H. Pleasant, is indefinitely suspended from the practice of law.

The respondent, Henry H. Pleasant, is commanded to desist and refrain from the practice of law, in any form, from this day forward, either as principal or agent or clerk or employee of another, and hereby is forbidden to appear in the State of Ohio as an attorney and counselor at law before any Court, judge, justice, board, commission or other public authority, and hereby is forbidden to give another an opinion as to the law or its application or advise with relation thereto.

It is further ordered that the respondent, Henry H. Pleasant, pay the costs of these proceedings taxed in the amount of $797.08.

It is further ordered that a copy of this entry be certified to all counsel of record, to the Board of Commissioners on Grievances and Discipline, to the respondent, to the Cleveland and Cuyahoga County Bar Associations and to the Presiding Judge of the United States District Court for the Northern District of Ohio and to the Presiding Judge of the Court of Common Pleas of Cuyahoga County.